

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
DELTA DIVISION

FILED  
FEB 15 2008  
DAVID CREWS, CLERK  
By *[Signature]* Deputy

DAVID SCOGGINS

PLAINTIFF

v.

CIVIL ACTION NO. *2:08cv032-p-d*

BOSTON SCIENTIFIC CORPORATION

DEFENDANT

**NOTICE OF REMOVAL OF ACTION  
PURSUANT TO 28 U.S.C. § 1331**

**PLEASE TAKE NOTICE** that this Notice of Removal and exhibit attached hereto have been filed this day in the United States District Court for the Northern District of Mississippi, for and on behalf of the Defendant, Boston Scientific Corporation. You are hereby served a copy of this Notice of Removal of said cause to the United States District Court for the Northern District of Mississippi, and you will be mindful of the provisions of the 28 U.S.C. § 1441, *et seq.* Please take notice hereof and govern yourselves accordingly. As its short and plain statement of the grounds of removal of this civil action, the Defendant would show unto the Court the following, to wit:

I.

Defendant, Boston Scientific Corporation, pursuant to 28 U.S.C. § 1446, hereby notices removal of this civil action to the United States District Court for the Northern District of Mississippi. This case was originally filed by the Plaintiff in the Circuit Court of DeSoto County, Mississippi, a certain civil action styled "DAVID SCOGGINS V. BOSTON SCIENTIFIC CORPORATION" being Cause No. CV2007-0148 on the docket of said Court.

II.

The basis of removal is the existence of diversity of citizenship pursuant to 28 U.S.C. § 1332(a)(1). The Plaintiff alleges in the Complaint that Defendant was negligent in manufacture, construction, assembly and inspection of the endostat device. Plaintiff further alleges that the Defendant is a foreign corporation doing business in the State of Mississippi. Plaintiff states that his alleged damages are \$2,000,000.00.

III.

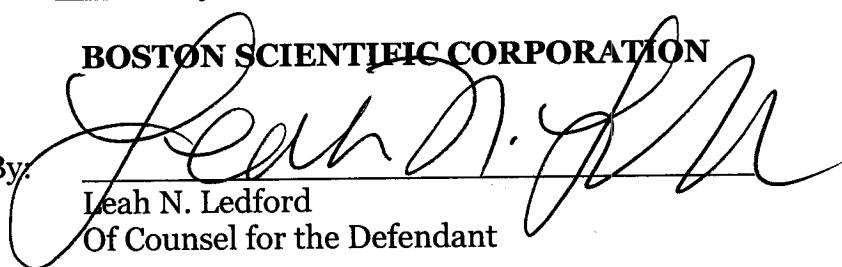
The attached certified record of the DeSoto County Circuit Court is provided pursuant to 28 U.S.C. § 1446(a). See Attached Exhibit "A."

IV.

The Defendant, upon filing of this Notice of Removal, has given Notice to the Plaintiff through his attorney of record, and simultaneous, therewith, this Defendant has filed a true and correct copy of the Notice of Removal with the Clerk of the Circuit Court of DeSoto County, Mississippi, in compliance with 28 U.S.C. § 1446(d).

**WHEREFORE, PREMISES CONSIDERED**, the Defendant, Boston Scientific Corporation, prays that this Court will proceed with the handling of this case as if it has been originally filed herein, and that further proceedings in the Circuit Court of DeSoto County, Mississippi, be hereby stayed.

Respectfully submitted, this the 13<sup>th</sup> day of February, 2008.

By:   
Leah N. Ledford  
Of Counsel for the Defendant

OF COUNSEL:

**SCOTT, SULLIVAN, STREETMAN & FOX, P.C.**  
**JAMES P. STREETMAN, III**  
(MS BAR NO. 7973)  
**LEAH N. LEDFORD**  
(MS BAR NO. 101394)  
P.O. Box 13847  
Jackson, MS 39236-3847  
Telephone: (601) 607-4800  
Facsimile: (601) 607-4802

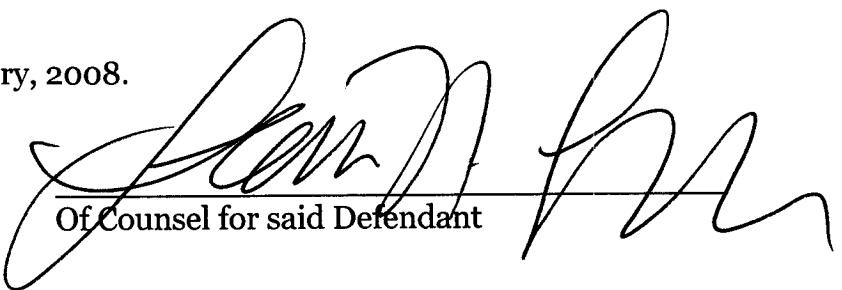
**CERTIFICATE OF SERVICE**

I, the undersigned counsel of record for Defendant, do hereby certify that I have this date caused to be delivered, **via United States Mail, postage prepaid**, a true and correct copy of the above and foregoing document to the following:

John Michael Bailey, Esq.  
210 E. Main Street  
Suite D  
Tupelo, MS 38804

Dale K. Thompson  
Circuit Court Clerk  
2535 Highway 51 South  
Room 201  
Hernando, MS 38632

This the 13<sup>th</sup> day of February, 2008.



Of Counsel for said Defendant

IN THE CIRCUIT COURT OF DESOTO COUNTY, MISSISSIPPI  
FOR THE SEVENTEENTH JUDICIAL DISTRICT AT HERNANDO

DAVID SCOGGINS,

Plaintiff,

NO CV2007-0148CD  
JURY DEMANDED

vs.

UNKNOWN MANUFACTURER OF CAUTERY MACHINE,

Defendant,

COMPLAINT

COMES NOW the Plaintiff, DAVID SCOGGINS by and through the undersigned attorneys and hereby files this complaint against the Defendant, UNKNOWN MANUFACTURER OF CAUTERY MACHINE, making the following allegations, to wit:

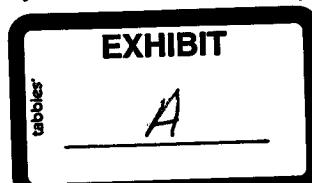
PARTIES

1. That the Plaintiff an adult resident of Memphis, Shelby County, Tennessee.

2. That the Defendant, Unknown Manufacturer of Cautery Machine, is a for-profit manufacturing entity providing medical equipment, to include Cautery machines, to the Baptist Memorial Hospital-DeSoto, and is either a sole proprietorship, a partnership, or a domestic corporation duly incorporated under the laws of this state or a foreign corporation and is authorized to do business within this state. Plaintiff requires additional information to effect service of process as the identity of the Defendant as well as any agent for the service of process is unknown to the Plaintiff as this time. Plaintiff intends to issue a subpoena in order to obtain the information necessary to serve this Complaint.

JUN 21 2007

*Dale K. Thompson*  
Circuit Court Clerk, Desoto County, MS



3. That the Plaintiff's cause of action arises in tort as a result of injuries he sustained when, as a patient undergoing a routine Colonoscopy at Baptist Memorial Hospital-DeSoto, the cauterizing machine malfunctioned, tearing a hole in the colon and abdominal wall of the Plaintiff, known as an intestinal perforation, causing extreme pain as well as grievous and permanent injury.

### FACTS

4. That on or about June 22, 2004, Plaintiff, David Scoggins, checked in to Baptist Memorial Hospital DeSoto for a scheduled medical procedure known as a Colonoscopy to have polyps removed from the surface of the colon.

5. That Plaintiff, David Scoggins, was prepared for surgery, and in the course of this preparation, he was placed on surgical table and was rendered unconscious by general anesthesia.

6. During the procedure, the attending surgeon was using a cauterizing machine to "burn" polyps from the surface of the Plaintiff's colon.

7. The attending surgeon, according to written medical narratives, asked the nurse to adjust this machine, at which time, the machine created a jolt of electricity, comparable to a lightning strike, into the colon of Mr. Scoggins.

8. The electric shock burned a hole into Mr. Scoggins colon, causing him to suffer a respiratory arrest and failure, erratic heart rates and an extended stay under intensive care on a ventilator for breathing support, and a feeding tube inserted into his stomach.

9. The Plaintiff was required, as part of efforts to save his life, to undergo an additional surgical procedure to repair the perforated colon, leaving the Plaintiff with a scar

from his chest to his waist.

10. The Plaintiff has also been left with a cognitive deficit, including memory loss, from which he may never fully recover.

11. That Plaintiff, David Scoggins, was a patient under the care of Baptist Memorial Hospital-DeSoto.

12. That Plaintiff entrusted his health, well being, and his very life, to Baptist Memorial Hospital-DeSoto.

13. The unknown manufacturer was under a duty to take every precaution to ensure that cautery machines being sold/supplied by it are properly designed, manufactured, constructed, assembled, inspected and safe for the intended use.

14. That Plaintiff was in a state of unconsciousness and not in a position to determine the safety of the surgical equipment to be used upon him. That Plaintiff nor any reasonable person not educated in the field of medicine or medical equipment could have known, by sight alone, that the cautery machine had an electrical malfunction.

15. That the negligence of Defendant, Unknown Manufacturer of Cautery Machine is the proximate cause of the injuries and damages sustained by the Plaintiff in this action, which shall be set forth hereinafter with more particularity.

### **NEGLIGENCE**

16. The Plaintiff hereby realleges the previous paragraphs and incorporates them by reference.

17. The Defendant, Unknown Manufacturer, participated in the manufacture, sale, and maintenance of the cautery machine.

18. At all times mentioned in this Complaint, Defendant so negligently and carelessly designed, manufactured, constructed, assembled, inspected, and sold the Cautery Machine to the Baptist Memorial Hospital-DeSoto, even though it was dangerous and unsafe for its intended uses.

19. This design defect made the product unreasonably dangerous.

20. Further, Defendant negligently maintained the said cautery machine, or negligently trained other personnel of Baptist Memorial Hospital-DeSoto, in the maintenance and care of the said cautery machine.

21. The cautery machine as manufactured and assembled by Defendant remained unchanged and was in the same condition at the time of the injury hereafter alleged.

22. Defendant knew or should have known when manufacturing and maintaining this electrical system that it was designed defectively or maintained, creating a unreasonable risk of injury for to Plaintiff.

23. That the negligence of Defendant, Unknown Manufacturer of Cautery Machine, is the proximate cause of the Plaintiff's injuries.

#### INJURIES AND DAMAGE

24. The Plaintiff hereby realleges the previous paragraphs and incorporates them by reference.

25. Plaintiff charges and alleges that as a direct and proximate result of the use of defendant's defective product, he suffered severe and permanent personal injuries, including but not limited to:

Great physical pain, past and future

Great mental and emotional suffering

Fear for his life

Loss of enjoyment of life, past and future

Loss of earnings, past and future

Fear and anxiety regarding future surgery/medical treatments

Doctor and medical bills

**WHEREFORE, PREMISES CONSIDERED**, Plaintiff respectfully prays:

1. That proper process issue against this Defendant and that Defendant be required to answer this Complaint.
2. That Plaintiff, David Scoggins, be awarded a judgment against the Defendant, in an amount not to exceed **\$2,000,000.00 (TWO MILLION DOLLARS)**, in actual, compensatory and punitive damages.
3. That the cost of this action be awarded to the Plaintiff.
4. That Plaintiff demands a Jury to try these issues when joined.
5. Plaintiff reserves the right to amend these pleadings to conform to the facts of this matter.

Respectfully Submitted,

**Law Offices of  
John Michael Bailey, P.C.**



Nichon Shannon  
Nichon Shannon MS101120  
John Michael Bailey MS101076  
Attorneys for Plaintiff  
5978 Knight Arnold Road, Ste. 400  
Memphis, Tennessee 38115  
(901) 529-1010  
(901) 529-1017 Fax

## SUBPOENA DUCES TECUM

Circuit Court

DeSoto County, Mississippi

DAVID SCOGGINS,

Plaintiff,

vs.

UNKNOWN MANUFACTURER  
CAUTERY MACHINE,

Defendant.

Cause No. *CV2007-0148CD*Issued  day of , 2007.

To the Sheriff of DeSoto County, MS

Greetings:

You are hereby commanded to summon:

Head of Department of Surgery  
 Baptist Memorial Hospital DeSoto  
 7601 Southcrest Parkway  
 Southaven, MS. 38671

**PRIVATE PROCESS SERVE**  
**Federated P. I., LLC**  
**Huston S. Akins**  
**901-324-1826**

**TO APPEAR AND BRING WITH YOU (OR MAIL):** (1) Name of the cautery machine, manufacturer name, serial number on the cautery machine and other identifying information with regard to the cautery machine used on David Scoggins on or about June 22, 2004 during the performing of a colonoscopy. (2) Any and all instructions, manuals, pamphlets, memorandums, documents, recall reports, maintenance logs, pictures, diagrams, charts, medical journal articles, text books, newspaper articles and/or updates pertinent to the assembly, usage, precautions and maintenance of any cautery machine in use at Baptist Memorial Hospital Desoto on or about June 22, 2004. Personally to be and appear on Monday, the 30<sup>th</sup> day of July, 2007 at 5:00 P.M., at the Law Offices of John Michael Bailey, 5978 Knight Arnold Rd., Memphis, TN 38115, then and there to testify and give evidence on behalf of the Plaintiff, in the case of Scoggins v. Unknown Manufacturer Cautery Machine.

This you will in no wise omit, under the penalty prescribed by law.

Herein fail not, and have you then and there this writ.

**\*\*\*CUSTODIAN, PLEASE NOTE:** In lieu of your personal appearance, you may mail a copy of the requested records to John Michael Bailey, Attorney, 5978 Knight Arnold Rd., Memphis, Tennessee 38115, to be received no later than the date indicated above.

TESTED and ISSUED 21 day of June 2007



*COPY*

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Came to hand and executed as commanded on \_\_\_\_\_

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This \_\_\_\_\_ day of \_\_\_\_\_, 2007.

DeSoto County Sheriff

By: \_\_\_\_\_ DS

Attorney: Nichon Shannon (101120)

Address: 5978 Knight Arnold, Memphis, TN 38115

Telephone: 901-529-1010

**PRIVATE PROCESS SERVER**

**I HEREBY CERTIFY THAT I HAVE SERVED THE WITHIN SUMMONS:**

By delivering on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ at \_\_\_\_\_ M. a copy of the summons and a copy of the Complaint to the following defendants \_\_\_\_\_

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(PLEASE PRINT THE FOLLOWING)

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Private Process Server

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Address

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Company

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Phone

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Signature

## FEE BILL, CIVIL CASES, CIRCUIT COURT

State of Mississippi  
 Desoto County

## DAVID SCROGGINS VS UNKNOWN MANUFACTURER OF CAUTERY MACHINE

Case # CV2007-0148      Acct #      Paid By CHECK 1612      Receipt# 24173

CLERK'S FEE	75.00
JURY TAX	3.00
COURT REPORTER FEE	10.00
LAW LIBRARY	2.50
ST COURT EDUCATION	2.00
CONSTITUENT FEE	.50
COURT ADMIN FEE	2.00
LEGAL ASSISTANCE	5.00
ELECTRONIC FILING	10.00

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Total	\$110.00
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Payment received from Nichon Shannon

Transaction 40807 Received 6/21/2007 at 11:43 Drawer 2 I.D. CML

Account Balance Due	0.00	Receipt Amount	\$110.00
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By Dale K. Thompson, Circuit Clerk

Case # CV2007-0148      Acct #      Paid By CHECK 1612      Receipt# 24173

<b>COVER SHEET</b> <b>Civil Case Filing Form</b> <i>(To be completed by Attorney/Party Prior to Filing of Pleading)</i>		Court Identification Docket Number <b>170</b> <b>01</b>	Case Year <b>2007</b>	Docket Number <b>011481</b>																																																																																																																																																																																																																																																															
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Death</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Garnishment</td> <td><input type="checkbox"/></td> <td>Name Change</td> <td><input type="checkbox"/></td> <td>Other <b>manufacturers Defect</b></td> </tr> <tr> <td><input type="checkbox"/></td> <td>Pension</td> <td><input type="checkbox"/></td> <td>Power of Attorney</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/></td> <td>Receivership</td> <td><input type="checkbox"/></td> <td>Testate Estate</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/></td> <td>Replevin</td> <td><input type="checkbox"/></td> <td>Will Contest</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/></td> <td>Stockholder Suit</td> <td><input type="checkbox"/></td> <td>Other</td> <td><input type="checkbox"/></td> </tr> <tr> <td colspan="2" style="text-align: center;"><b>Domestic Relations</b></td> <td colspan="3" style="text-align: center;"><b>Statutes/Rules</b></td> <td 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<td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/></td> <td>Termination of Parental Rights</td> <td><input type="checkbox"/></td> <td>Seaman</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/></td> <td>UIFSA (formerly URESA)</td> <td><input type="checkbox"/></td> <td>Other</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/></td> <td>Other</td> <td><input type="checkbox"/></td> <td colspan="3"></td> </tr> <tr> <td colspan="2" style="text-align: center;"><b>Contract</b></td> <td colspan="3" style="text-align: center;"><b>Appeals</b></td> <td colspan="2" style="text-align: center;"><b>Real Property</b></td> </tr> <tr> <td><input type="checkbox"/></td> <td>Breach of Contract</td> <td><input type="checkbox"/></td> <td>Administrative Agency</td> <td><input type="checkbox"/></td> <td>Adverse Possession</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Installment Contract</td> <td><input type="checkbox"/></td> <td>County Court</td> <td><input type="checkbox"/></td> <td>Eviction</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Insurance</td> <td><input type="checkbox"/></td> <td>Hardship Petition (Driver License)</td> <td><input type="checkbox"/></td> <td>Eminent Domain</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Product Liability under Contract</td> <td><input type="checkbox"/></td> <td>Justice Court</td> <td><input type="checkbox"/></td> <td>Judicial Foreclosure</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Specific Performance</td> <td><input type="checkbox"/></td> <td>MS Employment Security Comm'n</td> <td><input type="checkbox"/></td> <td>Lien Assertion</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Other</td> <td><input type="checkbox"/></td> <td>Municipal Court</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/></td> <td></td> <td><input type="checkbox"/></td> <td>Oil &amp; Gas Board</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/></td> <td></td> <td><input type="checkbox"/></td> <td>Workers' Compensation</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/></td> <td></td> <td><input type="checkbox"/></td> <td>Other</td> <td><input type="checkbox"/></td> </tr> <tr> <td colspan="5" style="text-align: center;"><b>Children and Minors - Non-Domestic</b></td> <td colspan="2" style="text-align: center;"><b>Civil Rights</b></td> </tr> <tr> <td><input type="checkbox"/></td> <td>Adoption - Noncontested</td> <td><input type="checkbox"/></td> <td>Elections</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/></td> <td>Consent to Abortion for Minor</td> <td><input type="checkbox"/></td> <td>Habeas Corpus</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/></td> <td>Removal of Minority</td> <td><input type="checkbox"/></td> <td>Post Conviction Relief</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/></td> <td>Other</td> <td><input type="checkbox"/></td> <td>Prisoner</td> <td><input type="checkbox"/></td> </tr> </table>					<b>Business/Commercial</b>		<b>Probate</b>			<b>Torts-Personal Injury</b>		<input type="checkbox"/>	Accounting (Business)	<input type="checkbox"/>	Accounting (Probate)	<input type="checkbox"/>	Bad Faith	<input type="checkbox"/>	Bankruptcy	<input type="checkbox"/>	Birth Certificate Correction	<input type="checkbox"/>	Fraud	<input type="checkbox"/>	Business Dissolution - Corporation	<input type="checkbox"/>	Commitment	<input type="checkbox"/>	Loss of Consortium	<input type="checkbox"/>	Business Dissolution - Partnership	<input type="checkbox"/>	Conservatorship	<input type="checkbox"/>	Malpractice - Legal	<input type="checkbox"/>	Debt Collection	<input type="checkbox"/>	Guardianship	<input type="checkbox"/>	Malpractice - Medical	<input type="checkbox"/>	Employment	<input type="checkbox"/>	Heirs/ship	<input type="checkbox"/>	Negligence - General	<input type="checkbox"/>	Examination of Debtor	<input type="checkbox"/>	Intestate Estate	<input type="checkbox"/>	Negligence - Motor Vehicle	<input type="checkbox"/>	Execution	<input type="checkbox"/>	Minor's Settlement	<input type="checkbox"/>	Products Liability	<input type="checkbox"/>	Foreign Judgment	<input type="checkbox"/>	Muniment of Title	<input type="checkbox"/>	Wrongful Death	<input type="checkbox"/>	Garnishment	<input type="checkbox"/>	Name Change	<input type="checkbox"/>	Other <b>manufacturers Defect</b>	<input type="checkbox"/>	Pension	<input type="checkbox"/>	Power of Attorney	<input type="checkbox"/>	<input type="checkbox"/>	Receivership	<input type="checkbox"/>	Testate Estate	<input type="checkbox"/>	<input type="checkbox"/>	Replevin	<input type="checkbox"/>	Will Contest	<input type="checkbox"/>	<input type="checkbox"/>	Stockholder Suit	<input type="checkbox"/>	Other	<input type="checkbox"/>	<b>Domestic Relations</b>		<b>Statutes/Rules</b>			<b>Mass Tort</b>		<input type="checkbox"/>	Child Custody/Visitation	<input type="checkbox"/>	Bond Validation	<input type="checkbox"/>	Asbestos	<input type="checkbox"/>	Child Support	<input type="checkbox"/>	Civil Forfeiture	<input type="checkbox"/>	Chemical Spill	<input type="checkbox"/>	Contempt	<input type="checkbox"/>	Declaratory Judgment	<input type="checkbox"/>	Dioxin	<input type="checkbox"/>	Divorce: Fault	<input type="checkbox"/>	ERISA	<input type="checkbox"/>	Hand/Arm Vibration	<input type="checkbox"/>	Divorce: Irreconcilable Differences	<input type="checkbox"/>	Eminent Domain	<input type="checkbox"/>	Hearing Loss	<input type="checkbox"/>	Domestic Abuse	<input type="checkbox"/>	Extraordinary Writ	<input type="checkbox"/>	Radioactive Materials	<input type="checkbox"/>	Emancipation	<input type="checkbox"/>	Federal Statutes	<input type="checkbox"/>	<input type="checkbox"/>	Modification	<input type="checkbox"/>	Injunction or Restraining Order	<input type="checkbox"/>	<input type="checkbox"/>	Paternity	<input type="checkbox"/>	Municipal Annexation	<input type="checkbox"/>	<input type="checkbox"/>	Property Division	<input type="checkbox"/>	Racketeering (RICO)	<input type="checkbox"/>	<input type="checkbox"/>	Separate Maintenance	<input type="checkbox"/>	Railroad	<input type="checkbox"/>	<input type="checkbox"/>	Termination of Parental Rights	<input type="checkbox"/>	Seaman	<input type="checkbox"/>	<input type="checkbox"/>	UIFSA (formerly URESA)	<input type="checkbox"/>	Other	<input type="checkbox"/>	<input type="checkbox"/>	Other	<input type="checkbox"/>				<b>Contract</b>		<b>Appeals</b>			<b>Real Property</b>		<input type="checkbox"/>	Breach of Contract	<input type="checkbox"/>	Administrative Agency	<input type="checkbox"/>	Adverse Possession	<input type="checkbox"/>	Installment Contract	<input type="checkbox"/>	County Court	<input type="checkbox"/>	Eviction	<input type="checkbox"/>	Insurance	<input type="checkbox"/>	Hardship Petition (Driver License)	<input type="checkbox"/>	Eminent Domain	<input type="checkbox"/>	Product Liability under Contract	<input type="checkbox"/>	Justice Court	<input type="checkbox"/>	Judicial Foreclosure	<input type="checkbox"/>	Specific Performance	<input type="checkbox"/>	MS Employment Security Comm'n	<input type="checkbox"/>	Lien Assertion	<input type="checkbox"/>	Other	<input type="checkbox"/>	Municipal Court	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	Oil & Gas Board	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	Workers' Compensation	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	Other	<input type="checkbox"/>	<b>Children and Minors - Non-Domestic</b>					<b>Civil Rights</b>		<input type="checkbox"/>	Adoption - Noncontested	<input type="checkbox"/>	Elections	<input type="checkbox"/>	<input type="checkbox"/>	Consent to Abortion for Minor	<input type="checkbox"/>	Habeas Corpus	<input type="checkbox"/>	<input type="checkbox"/>	Removal of Minority	<input type="checkbox"/>	Post Conviction Relief	<input type="checkbox"/>	<input type="checkbox"/>	Other	<input type="checkbox"/>	Prisoner	<input type="checkbox"/>
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IN THE Circuit COURT OF DeSOTO COUNTY, MISSISSIPPI  
Seventeenth JUDICIAL DISTRICT, CITY OF Hernando

Docket No. \_\_\_\_\_ Docket No. If Filed \_\_\_\_\_  
 File Yr. \_\_\_\_\_ Chronological No. \_\_\_\_\_ Clerk's Local ID \_\_\_\_\_ Prior to 1/1/94 \_\_\_\_\_

PLAINTIFFS IN REFERENCED CAUSE - Page \_\_\_\_\_ of \_\_\_\_\_ Plaintiffs Pages  
 IN ADDITION TO PLAINTIFF SHOWN ON CIVIL CASE FILING FORM COVER SHEET

Plaintiff # 1 \_\_\_\_\_  
 Individual: Scoggins \_\_\_\_\_ David \_\_\_\_\_  
 Last Name \_\_\_\_\_ First Name \_\_\_\_\_ Maiden Name, If Applicable \_\_\_\_\_ Middle Name \_\_\_\_\_  
 Jr/Sr/III \_\_\_\_\_

Check (✓) if Individual Plaintiff is acting in capacity as Executor(trix) or Administrator(trix) of an Estate and Enter Style:

Estate of \_\_\_\_\_  
 Check (✓) if Individual Plaintiff is acting in capacity as Business Owner/Operator (D/B/A) or State Agency and enter that name below:

D/B/A \_\_\_\_\_

Business: \_\_\_\_\_  
Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated

Check (✓) if Business Plaintiff is filing suit in the name of an entity other than the name above and enter below

D/B/A \_\_\_\_\_

ATTORNEY FOR THIS PLAINTIFF: 101120 Bar# or Name Nichon Shannon Pro Hac Vice  Not Attorney

Plaintiff # \_\_\_\_\_  
 Individual: \_\_\_\_\_  
 Last Name \_\_\_\_\_ First Name \_\_\_\_\_ Maiden Name, If Applicable \_\_\_\_\_ Middle Name \_\_\_\_\_  
 Jr/Sr/III \_\_\_\_\_

Check (✓) if Individual Plaintiff is acting in capacity as Business Owner/Operator (D/B/A) or State Agency and enter that name below:

D/B/A \_\_\_\_\_

Business: \_\_\_\_\_  
Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated

Check (✓) if Business Plaintiff is filing suit in the name of an entity other than the name above and enter below

D/B/A \_\_\_\_\_

ATTORNEY FOR THIS PLAINTIFF: \_\_\_\_\_ Bar# or Name \_\_\_\_\_ Pro Hac Vice  Not Attorney

Plaintiff # \_\_\_\_\_  
 Individual: \_\_\_\_\_  
 Last Name \_\_\_\_\_ First Name \_\_\_\_\_ Maiden Name, If Applicable \_\_\_\_\_ Middle Name \_\_\_\_\_  
 Jr/Sr/III \_\_\_\_\_

Check (✓) if Individual Plaintiff is acting in capacity as Business Owner/Operator (D/B/A) or State Agency and enter that name below:

D/B/A \_\_\_\_\_

Business: \_\_\_\_\_  
Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated

Check (✓) if Business Plaintiff is filing suit in the name of an entity other than the name above and enter below

D/B/A \_\_\_\_\_

ATTORNEY FOR THIS PLAINTIFF: \_\_\_\_\_ Bar# or Name \_\_\_\_\_ Pro Hac Vice  Not Attorney

IN THE Circuit COURT OF DeSoto COUNTY, MISSISSIPPI  
Seventeenth JUDICIAL DISTRICT, CITY OF Hernando

Docket No. \_\_\_\_\_ Docket No. If Filed \_\_\_\_\_  
 File Yr \_\_\_\_\_ Chronological No. \_\_\_\_\_ Clerk's Local ID \_\_\_\_\_ Prior to 1/1/94 \_\_\_\_\_

**DEFENDANTS IN REFERENCED CAUSE - Page \_\_\_\_ of \_\_\_\_ Defendants Pages  
 IN ADDITION TO DEFENDANT SHOWN ON CIVIL CASE FILING FORM COVER SHEET**

Defendant # 1 :

Individual: Unknown manufacturer of cautery machine \_\_\_\_\_  
 Last Name \_\_\_\_\_ First Name \_\_\_\_\_ Maiden Name, if Applicable \_\_\_\_\_ Middle Init. \_\_\_\_\_ Jr/Sr/III/IV \_\_\_\_\_

Check (✓) if Individual Defendant is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style:

Estate of \_\_\_\_\_

Check (✓) if Individual Defendant is acting in capacity as Business Owner/Operator (D/B/A) or State Agency, and enter that name below:

D/B/A \_\_\_\_\_

Business \_\_\_\_\_

Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated

Check (✓) if Business Defendant is being sued in the name of an entity other than the name above, and enter below:

D/B/A \_\_\_\_\_

ATTORNEY FOR THIS DEFENDANT: \_\_\_\_\_ Bar # or Name: \_\_\_\_\_ Pro Hac Vice (✓) \_\_\_\_\_ Not an Attorney(✓) \_\_\_\_\_

Defendant # 2 :

Individual: \_\_\_\_\_ Last Name \_\_\_\_\_ First Name \_\_\_\_\_ ( \_\_\_\_\_ Maiden Name, if Applicable \_\_\_\_\_ ) Middle Init. \_\_\_\_\_ Jr/Sr/III/IV \_\_\_\_\_

Check (✓) if Individual Defendant is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style:

Estate of \_\_\_\_\_

Check (✓) if Individual Defendant is acting in capacity as Business Owner/Operator (D/B/A) or State Agency, and enter that name below:

D/B/A \_\_\_\_\_

Business \_\_\_\_\_

Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated

Check (✓) if Business Defendant is being sued in the name of an entity other than the name above, and enter below:

D/B/A \_\_\_\_\_

ATTORNEY FOR THIS DEFENDANT: \_\_\_\_\_ Bar # or Name: \_\_\_\_\_ Pro Hac Vice (✓) \_\_\_\_\_ Not an Attorney(✓) \_\_\_\_\_

Defendant # 3 :

Individual: \_\_\_\_\_ Last Name \_\_\_\_\_ First Name \_\_\_\_\_ ( \_\_\_\_\_ Maiden Name, if Applicable \_\_\_\_\_ ) Middle Init. \_\_\_\_\_ Jr/Sr/III/IV \_\_\_\_\_

Check (✓) if Individual Defendant is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style:

Estate of \_\_\_\_\_

Check (✓) if Individual Defendant is acting in capacity as Business Owner/Operator (D/B/A) or State Agency, and enter that name below:

D/B/A \_\_\_\_\_

Business \_\_\_\_\_

Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated

Check (✓) if Business Defendant is being sued in the name of an entity other than the name above, and enter below:

D/B/A \_\_\_\_\_

ATTORNEY FOR THIS DEFENDANT: \_\_\_\_\_ Bar # or Name: \_\_\_\_\_ Pro Hac Vice (✓) \_\_\_\_\_ Not an Attorney(✓) \_\_\_\_\_

**COVER SHEET**  
**Civil Case Filing Form**  
*(To be completed by Attorney/Party  
Prior to Filing of Pleading)*

Mississippi Supreme Court  
Administrative Office of Courts

Form AOC/01  
(Revised 5/11/2000)

Court Identification  
Docket Number

Case Year

Docket Number

17 CT

2007

0148

2007

County # Judicial Court ID  
District (CH, CI, CO)

062107  
Month Date Year

Local Docket ID

This area to be completed by Clerk

Case Number if filed prior to 1/1/94

In the Circuit

Court of Desoto

County

Short Style of Case: Scoggins vs. Unknown manufacturer of cautery Machine  
Party Filing Initial Pleading: Type Print Name Nichon Shannon MS Bar No. 101120

Check (✓) if Not an Attorney

Check (✓) if Pro Hac Vice Signature

Compensatory Damages Sought:

Punitive Damages Sought:

*Is Child Support contemplated as an issue in this suit?*  Yes  No If "yes" is checked, please submit a completed Child Support Information Sheet with Final Decree/Judgment

**PLAINTIFF - PARTY(IES) INITIALLY BRINGING SUIT SHOULD BE ENTERED FIRST (FIRST NAME IN SHORT STYLE) - ENTER ADDITIONAL PLAINTIFFS ON SEPARATE FORM**

Individual Scoggins David

Last Name

First Name

Maiden Name, If Applicable

Middle Init. Jr/Sr/III/IV

Address of Plaintiff 2949 Meadowbrook Rd, Memphis, TN 38109

Check (✓) if Individual Plaintiff is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style:  
Estate of \_\_\_\_\_

Check (✓) if Individual Plaintiff is acting in capacity as Business Owner/Operator (d/b/a) or State Agency, and enter entity:  
D/B/A / Agency \_\_\_\_\_

Business \_\_\_\_\_

Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated  
 Check (✓) if Business Plaintiff is filing suit in the name of an entity other than the above, and enter below:  
D/B/A: \_\_\_\_\_

**DEFENDANT - NAME OF DEFENDANT (FIRST NAME IN SHORT STYLE) - ENTER ADDITIONAL DEFENDANTS ON SEPARATE FORM**

Individual Unknown manufacturer of cautery machine

Last Name

First Name

Maiden Name, If Applicable

Middle Init. Jr/Sr/III/IV

Check (✓) if Individual Defendant is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style:  
Estate of \_\_\_\_\_

Check (✓) if Individual Defendant is acting in capacity as Business Owner/Operator (d/b/a) or State Agency, and enter entity:  
D/B/A / Agency \_\_\_\_\_

Business \_\_\_\_\_

Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated  
 Check (✓) if Business Defendant is filing suit in the name of an entity other than the above, and enter below:  
D/B/A: \_\_\_\_\_

ATTORNEY FOR THIS DEFENDANT: \_\_\_\_\_ Bar No. Or Name: \_\_\_\_\_ Pro Hac Vice (✓) \_\_\_\_\_  
(if known)

*In left hand column, check one (1) box that best describes the nature of this suit. In right hand column check all boxes which indicate secondary claims.*

**Business/Commercial**

- Accounting (Business)
- Bankruptcy
- Business Dissolution - Corporation
- Business Dissolution - Partnership
- Debt Collection
- Employment
- Examination of Debtor
- Execution
- Foreign Judgment
- Garnishment
- Pension
- Receivership
- Replevin
- Stockholder Suit
- Other \_\_\_\_\_

**Domestic Relations**

- Child Custody/Visitation
- Child Support
- Contempt
- Divorce: Fault
- Divorce: Irreconcilable Differences
- Domestic Abuse
- Emancipation
- Modification
- Paternity
- Property Division
- Separate Maintenance
- Termination of Parental Rights
- UIFSA (formerly URESA)
- Other \_\_\_\_\_

**Contract**

- Breach of Contract
- Installment Contract
- Insurance
- Product Liability under Contract
- Specific Performance
- Other \_\_\_\_\_

**Probate**

- Accounting (Probate)
- Birth Certificate Correction
- Commitment
- Conservatorship
- Guardianship
- Heirship
- Intestate Estate
- Minor's Settlement
- Muniment of Title
- Name Change
- Power of Attorney
- Testate Estate
- Will Contest
- Other \_\_\_\_\_

**Statutes/Rules**

- Bond Validation
- Civil Forfeiture
- Declaratory Judgment
- ERISA
- Eminent Domain
- Extraordinary Writ
- Federal Statutes
- Injunction or Restraining Order
- Municipal Annexation
- Racketeering (RICO)
- Railroad
- Seaman
- Other \_\_\_\_\_

**Appeals**

- Administrative Agency
- County Court
- Hardship Petition (Driver License)
- Justice Court
- MS Employment Security Comm'n
- Municipal Court
- Oil & Gas Board
- Workers' Compensation
- Other \_\_\_\_\_

**Children and Minors - Non-Domestic**

- Adoption - Noncontested
- Consent to Abortion for Minor
- Removal of Minority

**Torts-Personal Injury**

- Bad Faith
- Fraud
- Loss of Consortium
- Malpractice - Legal
- Malpractice - Medical
- Negligence - General
- Negligence - Motor Vehicle
- Products Liability
- Wrongful Death
- Other manufacturers Defect

**Mass Tort**

- Asbestos
- Chemical Spill
- Dioxin
- Hand/Arm Vibration
- Hearing Loss
- Radioactive Materials
- Other \_\_\_\_\_

**Real Property**

- Adverse Possession
- Ejectment
- Eminent Domain
- Judicial Foreclosure
- Lien Assertion
- Partition
- Receiver Appointment
- Tax Sale: Confirmation/Cancellation
- Title, Boundary &/or Easement
- Other \_\_\_\_\_

**Civil Rights**

- Elections
- Habeas Corpus
- Post Conviction Relief
- Prisoner
- Other \_\_\_\_\_

IN THE Circuit COURT OF DeSoto COUNTY, MISSISSIPPI  
Seventeenth JUDICIAL DISTRICT, CITY OF Hernando

Docket No. \_\_\_\_\_ Docket No. If Filed \_\_\_\_\_  
 File Yr. \_\_\_\_\_ Chronological No. \_\_\_\_\_ Clerk's Local ID \_\_\_\_\_ Prior to 1/1/94 \_\_\_\_\_

**PLAINTIFFS IN REFERENCED CAUSE - Page \_\_\_\_\_ of \_\_\_\_\_ Plaintiffs Pages**  
**IN ADDITION TO PLAINTIFF SHOWN ON CIVIL CASE FILING FORM COVER SHEET**

Plaintiff # 1:  
 Individual: Scoggins David \_\_\_\_\_  
 Last Name \_\_\_\_\_ First Name \_\_\_\_\_ Maiden Name, if Applicable \_\_\_\_\_ Middle Name \_\_\_\_\_ Jr/Sr/III \_\_\_\_\_

Check (✓) if Individual Plaintiff is acting in capacity as Executor(trix) or Administrator(trix) of an Estate and Enter Style:

Estate of \_\_\_\_\_  
 Check (✓) if Individual Plaintiff is acting in capacity as Business Owner/Operator (D/B/A) or State Agency and enter that name below:  
 D/B/A \_\_\_\_\_

Business: \_\_\_\_\_ Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated

Check (✓) if Business Plaintiff is filing suit in the name of an entity other than the name above and enter below  
 D/B/A \_\_\_\_\_

ATTORNEY FOR THIS PLAINTIFF: 101120 Bar# or Name Nichon Shannon Pro Hac Vice  Not Attorney

Plaintiff # 2:  
 Individual: \_\_\_\_\_ Last Name \_\_\_\_\_ First Name \_\_\_\_\_ Maiden Name, if Applicable \_\_\_\_\_ Middle Name \_\_\_\_\_ Jr/Sr/III \_\_\_\_\_

Check (✓) if Individual Plaintiff is acting in capacity as Business Owner/Operator (D/B/A) or State Agency and enter that name below:

D/B/A \_\_\_\_\_

Business: \_\_\_\_\_ Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated

Check (✓) if Business Plaintiff is filing suit in the name of an entity other than the name above and enter below  
 D/B/A \_\_\_\_\_

ATTORNEY FOR THIS PLAINTIFF: \_\_\_\_\_ Bar# or Name \_\_\_\_\_ Pro Hac Vice  Not Attorney

Plaintiff # 3:  
 Individual: \_\_\_\_\_ Last Name \_\_\_\_\_ First Name \_\_\_\_\_ Maiden Name, if Applicable \_\_\_\_\_ Middle Name \_\_\_\_\_ Jr/Sr/III \_\_\_\_\_

Check (✓) if Individual Plaintiff is acting in capacity as Business Owner/Operator (D/B/A) or State Agency and enter that name below:

D/B/A \_\_\_\_\_

Business: \_\_\_\_\_ Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated

Check (✓) if Business Plaintiff is filing suit in the name of an entity other than the name above and enter below  
 D/B/A \_\_\_\_\_

ATTORNEY FOR THIS PLAINTIFF: \_\_\_\_\_ Bar# or Name \_\_\_\_\_ Pro Hac Vice  Not Attorney

IN THE Circuit COURT OF DeSoto COUNTY, MISSISSIPPI  
Seventeenth JUDICIAL DISTRICT, CITY OF Hernando

Docket No. \_\_\_\_\_ File Yr \_\_\_\_\_ Chronological No. \_\_\_\_\_ Clerk's Local ID \_\_\_\_\_ Docket No. If Filed  
 Prior to 1/1/94 \_\_\_\_\_

**DEFENDANTS IN REFERENCED CAUSE - Page \_\_\_\_ of \_\_\_\_ Defendants Pages  
 IN ADDITION TO DEFENDANT SHOWN ON CIVIL CASE FILING FORM COVER SHEET**

Defendant # 1 :

Individual: Unknown manufacturer of Cautery Machine Last Name \_\_\_\_\_ First Name \_\_\_\_\_ Maiden Name, if Applicable \_\_\_\_\_ Middle Init. \_\_\_\_\_ Jr/Sr/III/IV \_\_\_\_\_

Check (✓) if Individual Defendant is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style:

Estate of \_\_\_\_\_

Check (✓) if Individual Defendant is acting in capacity as Business Owner/Operator (D/B/A) or State Agency, and enter that name below:

D/B/A \_\_\_\_\_

Business \_\_\_\_\_

Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated

Check (✓) if Business Defendant is being sued in the name of an entity other than the name above, and enter below:

D/B/A \_\_\_\_\_

ATTORNEY FOR THIS DEFENDANT: \_\_\_\_\_ Bar # or Name: \_\_\_\_\_ Pro Hac Vice (✓) \_\_\_\_\_ Not an Attorney(✓) \_\_\_\_\_

Defendant # 2 :

Individual: \_\_\_\_\_ Last Name \_\_\_\_\_ First Name \_\_\_\_\_ Maiden Name, if Applicable \_\_\_\_\_ Middle Init. \_\_\_\_\_ Jr/Sr/III/IV \_\_\_\_\_

Check (✓) if Individual Defendant is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style:

Estate of \_\_\_\_\_

Check (✓) if Individual Defendant is acting in capacity as Business Owner/Operator (D/B/A) or State Agency, and enter that name below:

D/B/A \_\_\_\_\_

Business \_\_\_\_\_

Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated

Check (✓) if Business Defendant is being sued in the name of an entity other than the name above, and enter below:

D/B/A \_\_\_\_\_

ATTORNEY FOR THIS DEFENDANT: \_\_\_\_\_ Bar # or Name: \_\_\_\_\_ Pro Hac Vice (✓) \_\_\_\_\_ Not an Attorney(✓) \_\_\_\_\_

Defendant # 3 :

Individual: \_\_\_\_\_ Last Name \_\_\_\_\_ First Name \_\_\_\_\_ Maiden Name, if Applicable \_\_\_\_\_ Middle Init. \_\_\_\_\_ Jr/Sr/III/IV \_\_\_\_\_

Check (✓) if Individual Defendant is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style:

Estate of \_\_\_\_\_

Check (✓) if Individual Defendant is acting in capacity as Business Owner/Operator (D/B/A) or State Agency, and enter that name below:

D/B/A \_\_\_\_\_

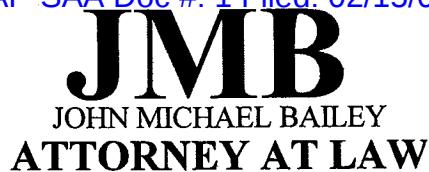
Business \_\_\_\_\_

Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated

Check (✓) if Business Defendant is being sued in the name of an entity other than the name above, and enter below:

D/B/A \_\_\_\_\_

ATTORNEY FOR THIS DEFENDANT: \_\_\_\_\_ Bar # or Name: \_\_\_\_\_ Pro Hac Vice (✓) \_\_\_\_\_ Not an Attorney(✓) \_\_\_\_\_



June 21, 2007

Clerk of Court  
Circuit Court of DeSoto County, MS.  
2535 Hwy. 51 South  
Hernando, MS 38632

**RE: David Scoggins vs. Unknown Manufacturer of Cautery Machine  
Circuit Court Docket No. CV2007-0148CD**

Dear Sir/Madam:

Please find enclosed herewith the civil cover sheet I had inadvertently left out in the above referenced matter.

If you have any questions please call me directly at (901) 507-3707.

Sincerely,

**Law Offices of  
John Michael Bailey, P.C.**

A handwritten signature in black ink that appears to read "Cindy Garcia".

Cindy Garcia  
Litigation Assistant

Enclosure

**FILED**

**JUL 03 2007**

DALE K. THOMPSON, CIRCUIT CLERK  
DESOTO COUNTY, MISSISSIPPI  
MINUTE BOOK \_\_\_\_\_ PAGE \_\_\_\_\_

**IN THE CIRCUIT COURT OF DESOTO COUNTY, MISSISSIPPI  
FOR THE SEVENTEENTH JUDICIAL DISTRICT AT HERNANDO**

---

**DAVID SCOGGINS,**

**Plaintiff,**

**NO. CV2007-0148 CD  
JURY DEMANDED**

**vs.**

**MICROVATIVE,**

**Defendant,**

---

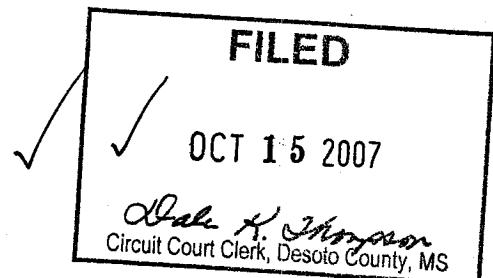
**MOTION OF THE PLAINTIFF DAVID SCOGGINS, FOR LEAVE  
TO AMEND COMPLAINT**

---

**COMES NOW**, the Plaintiff, DAVID SCOGGINS, by and through his attorney of record would show unto this Honorable Court as follows to wit:

1. The Plaintiff, David Scoggins, filed a Complaint against the Defendant, a Unknown Manufacturer of Cautery Machine, on or about June 21, 2007, claiming damages for injuries he sustained when, as a patient undergoing a routine Colonoscopy at Baptist Memorial Hospital DeSoto, the cauterizing machine malfunctioned, tearing a hole in the colon and abdominal wall of the Plaintiff, known as an intestinal perforation, causing extreme pain as well as grievous and permanent injury.

2. While filing the complaint, the Plaintiff was unaware of the name and address of the Manufacturer of said Cautery machine and the exact name of the machine or device used for the procedure. Hence, the unknown Defendant was named in the complaint as "Unknown manufacturer of Cautery machine".



3. While filing the complaint, the Plaintiff took out a Subpoena Duces Tecum to Baptist Memorial Hospital, DeSoto, under whose care and custody, the Plaintiff sustained injury, requesting them to furnish particulars about the name and address of the manufacturer, the device manufactured by them which was used for the procedure and other relevant information. The Baptist Memorial Hospital, DeSoto filed its response to the Subpoena on July 12, 2007, disclosing the name of the unknown manufacturer as "Microvasive", addressed at Boston Scientific Corporation, 480 Pleasant Street, Watertown, PA 02172 and the name of the device manufactured by Microvasive which was used for Plaintiff's procedure as "Endostat II Bipolar/Monopolar Electrosurgical Generator, Device Number D2067."

4. The amendment as sought, is just and necessary, as complete relief cannot be accorded among those already named party. No prejudice will be caused to the Defendant if this motion is granted.

5. That the Plaintiff desires to amend his complaint to correct the name of the Defendant, Unknown manufacturer of Cautery Machine, as "Microvasive", furnish its correct address as well as correct name of the device used for Plaintiff's procedure, pursuant to M.R.C.P. Rule 15.(a) and 15.(c) and Rule 19.

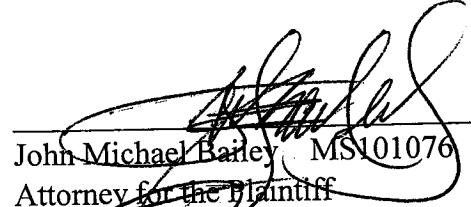
**WHEREFORE PREMISES CONSIDERED**, the Plaintiff respectfully prays:

1. That this Honorable Court grant leave of this motion so the Plaintiff can amend her Complaint, attached hereto as **EXHIBIT A**.

2. For such other further relief to which the Plaintiff may be entitled.

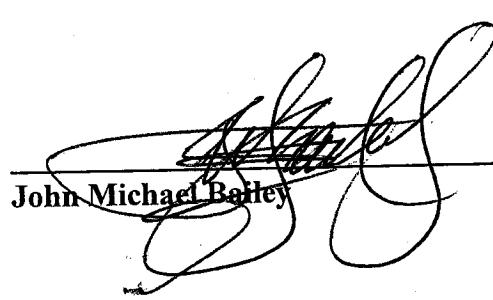
Respectfully Submitted,

**Law Offices of  
John Michael Bailey, P.C.**

  
John Michael Bailey MS101076  
Attorney for the Plaintiff  
5978 Knight Arnold Rd., Suite 400  
Memphis, TN. 38115  
901-529-1010  
901-529-1017 Fax

**CERTIFICATE OF SERVICE**

I, John Michael Bailey, do hereby certify that I have served a true and correct copy of the foregoing to all interested parties by either hand delivery or by the placing of the same in the United States Mail, postage prepaid on this 18th day of Sept, 2007

  
John Michael Bailey

IN THE CIRCUIT COURT OF DESOTO COUNTY, MISSISSIPPI  
FOR THE SEVENTEENTH JUDICIAL DISTRICT AT HERNANDO

DAVID SCOGGINS,

Plaintiff,

NO CJ2007-0148CD  
JURY DEMANDED

vs.

UNKNOWN MANUFACTURER OF CAUTERY MACHINE,

Defendant,

---

COMPLAINT

---

COMES NOW the Plaintiff, DAVID SCOGGINS by and through the undersigned attorneys and hereby files this complaint against the Defendant, UNKNOWN MANUFACTURER OF CAUTERY MACHINE, making the following allegations, to wit:

PARTIES

1. That the Plaintiff an adult resident of Memphis, Shelby County, Tennessee.
2. That the Defendant, Unknown Manufacturer of Cautery Machine, is a for-profit manufacturing entity providing medical equipment, to include Cautery machines, to the Baptist Memorial Hospital-DeSoto, and is either a sole proprietorship, a partnership, or a domestic corporation duly incorporated under the laws of this state or a foreign corporation and is authorized to do business within this state. Plaintiff requires additional information to effect service of process as the identity of the Defendant as well as any agent for the service of process is unknown to the Plaintiff as this time. Plaintiff intends to issue a subpoena in order to obtain the information necessary to serve this Complaint.

**FILED**

JUN 21 2007

**EXHIBIT A**

*Dale H. Thompson*  
Circuit Court Clerk, Desoto County, MS

3. That the Plaintiff's cause of action arises in tort as a result of injuries he sustained when, as a patient undergoing a routine Colonoscopy at Baptist Memorial Hospital-DeSoto, the cauterizing machine malfunctioned, tearing a hole in the colon and abdominal wall of the Plaintiff, known as an intestinal perforation, causing extreme pain as well as grievous and permanent injury.

### FACTS

4. That on or about June 22, 2004, Plaintiff, David Scoggins, checked in to Baptist Memorial Hospital DeSoto for a scheduled medical procedure known as a Colonoscopy to have polyps removed from the surface of the colon.

5. That Plaintiff, David Scoggins, was prepared for surgery, and in the course of this preparation, he was placed on surgical table and was rendered unconscious by general anesthesia.

6. During the procedure, the attending surgeon was using a cauterizing machine to "burn" polyps from the surface of the Plaintiff's colon.

7. The attending surgeon, according to written medical narratives, asked the nurse to adjust this machine, at which time, the machine created a jolt of electricity, comparable to a lightning strike, into the colon of Mr. Scoggins.

8. The electric shock burned a hole into Mr. Scoggins colon, causing him to suffer a respiratory arrest and failure, erratic heart rates and an extended stay under intensive care on a ventilator for breathing support, and a feeding tube inserted into his stomach.

9. The Plaintiff was required, as part of efforts to save his life, to undergo an additional surgical procedure to repair the perforated colon, leaving the Plaintiff with a scar

from his chest to his waist.

10. The Plaintiff has also been left with a cognitive deficit, including memory loss, from which he may never fully recover.

11. That Plaintiff, David Scoggins, was a patient under the care of Baptist Memorial Hospital-DeSoto.

12. That Plaintiff entrusted his health, well being, and his very life, to Baptist Memorial Hospital-DeSoto.

13. The unknown manufacturer was under a duty to take every precaution to ensure that cautery machines being sold/supplied by it are properly designed, manufactured, constructed, assembled, inspected and safe for the intended use.

14. That Plaintiff was in a state of unconsciousness and not in a position to determine the safety of the surgical equipment to be used upon him. That Plaintiff nor any reasonable person not educated in the field of medicine or medical equipment could have known, by sight alone, that the cautery machine had an electrical malfunction.

15. That the negligence of Defendant, Unknown Manufacturer of Cautery Machine is the proximate cause of the injuries and damages sustained by the Plaintiff in this action, which shall be set forth hereinafter with more particularity.

### NEGLIGENCE

16. The Plaintiff hereby realleges the previous paragraphs and incorporates them by reference.

17. The Defendant, Unknown Manufacturer, participated in the manufacture, sale, and maintenance of the cautery machine.

18. At all times mentioned in this Complaint, Defendant so negligently and carelessly designed, manufactured, constructed, assembled, inspected, and sold the Cautery Machine to the Baptist Memorial Hospital-DeSoto, even though it was dangerous and unsafe for its intended uses.

19. This design defect made the product unreasonably dangerous.

20. Further, Defendant negligently maintained the said cautery machine, or negligently trained other personnel of Baptist Memorial Hospital-DeSoto, in the maintenance and care of the said cautery machine.

21. The cautery machine as manufactured and assembled by Defendant remained unchanged and was in the same condition at the time of the injury hereafter alleged.

22. Defendant knew or should have known when manufacturing and maintaining this electrical system that it was designed defectively or maintained, creating a unreasonable risk of injury for to Plaintiff.

23. That the negligence of Defendant, Unknown Manufacturer of Cautery Machine, is the proximate cause of the Plaintiff's injuries.

#### **INJURIES AND DAMAGE**

24. The Plaintiff hereby realleges the previous paragraphs and incorporates them by reference.

25. Plaintiff charges and alleges that as a direct and proximate result of the use of defendant's defective product, he suffered severe and permanent personal injuries, including but not limited to:

Great physical pain, past and future  
Great mental and emotional suffering  
Fear for his life  
Loss of enjoyment of life, past and future  
Loss of earnings, past and future  
Fear and anxiety regarding future surgery/medical treatments  
Doctor and medical bills

**WHEREFORE, PREMISES CONSIDERED**, Plaintiff respectfully prays:

1. That proper process issue against this Defendant and that Defendant be required to answer this Complaint.
2. That Plaintiff, David Scoggins, be awarded a judgment against the Defendant, in an amount not to exceed **\$2,000,000.00 (TWO MILLION DOLLARS)**, in actual, compensatory and punitive damages.
3. That the cost of this action be awarded to the Plaintiff.
4. That Plaintiff demands a Jury to try these issues when joined.
5. Plaintiff reserves the right to amend these pleadings to conform to the facts of this matter.

Respectfully Submitted,

**Law Offices of  
John Michael Bailey, P.C.**

  
\_\_\_\_\_  
Nichon Shannon MS101120  
John Michael Bailey MS101076  
Attorneys for Plaintiff  
5978 Knight Arnold Road, Ste. 400  
Memphis, Tennessee 38115  
(901) 529-1010  
(901) 529-1017 Fax

**IN THE CIRCUIT COURT OF DESOTO COUNTY, MISSISSIPPI  
FOR THE SEVENTEENTH JUDICIAL DISTRICT AT HERNANDO**

**DAVID SCOGGINS,**

**Plaintiff,**

**NO. CV2007-0148 CD  
JURY DEMANDED**

**vs.**

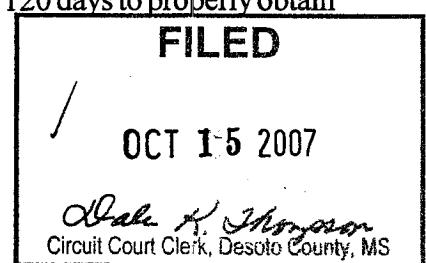
**MICROVATIVE,**

**Defendant,**

**MOTION FOR EXTENSION OF TIME  
FOR EFFECTIVE SERVICE ON DEFENDANT**

COMES NOW, the Plaintiff, David Scoggins, by and through counsel of record, John Michael Bailey, and files this motion for extension of time within which to obtain effective service upon Defendant, states as follows:

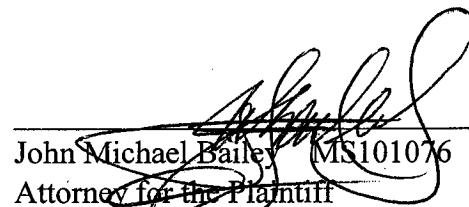
1. The Plaintiff, David Scoggins, filed a Complaint against the Defendant, Unknown Manufacturer of Cautery Machine on or about June 21, 2007.
2. On or about June 21, 2007 a summons was not issued to said Unknown Defendant due to lack of information as to the correct name and address of said manufacturer of Cautery Machine..
3. Plaintiff respectfully requests that he be given an additional 120 days to properly obtain effective service within that time.



**WHEREFORE**, the Plaintiff, prays that said Motion for Extension of Time for Effective Service be granted allowing Plaintiff to obtain service upon the Defendant within 120 days.

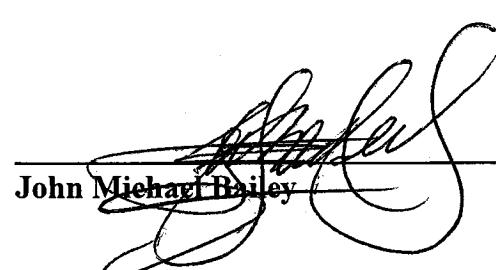
Respectfully submitted,

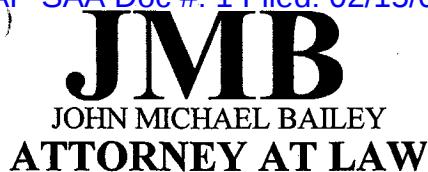
**Law Offices of  
John Michael Bailey, P.C.**

  
John Michael Bailey, MS101076  
Attorney for the Plaintiff  
5978 Knight Arnold Rd., Suite 400  
Memphis, TN. 38115  
(901) 529-1010  
(901) 529-1017 Fax

**CERTIFICATE OF SERVICE**

I, John Michael Bailey, do hereby certify that I have served a true and correct copy of the foregoing to all interested parties by either hand delivery or by the placing of the same in the United States Mail, postage prepaid on this 18th day of September, 2007

  
John Michael Bailey



September 19, 2007

**VIA PRIORITY MAIL:**

Clerk of Court  
Circuit Court of DeSoto County, MS  
2535 Hwy. 51 South  
Hernando, MS 38632

**RE: David Scoggins vs. Microvative  
Circuit Court Docket No. CV2007-0148CD**

Dear Sir/Madam:

Please find enclosed for filing herewith an original and three copies of the following:

1. Amended Complaint.
2. Motion for the Plaintiff David Scoggins, For Leave to Amend Complaint.
3. Motion for Extension of Time for Effective Service on Defendant.
4. Civil summons.

I have also enclosed an original and two copies of a civil summons to be issued and returned to me so that I may have a Private Process Server serve a copy of the Complaint upon Defendant, Microvative.

Please return filed stamp copies in the self addressed envelope I have enclosed for your convenience.

If you have any questions please call me directly at (901) 507-3707. Thank you for time and attention to this matter.

Sincerely,

**Law Offices of  
John Michael Bailey, P.C.**

  
Cindy Garcia  
Litigation Assistant

**FILED**

**OCT 15 2007**

Enclosures

  
CIRCUIT COURT CLERK, DESOTO COUNTY, MISS.